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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re D.J. et al., Persons
Coming Under the Juvenile
Court Law.

B291858
(Los Angeles County
Super. Ct. Nos.
CK74139C & CK74139D)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

T.W.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County. Akemi Arakaki, Judge. Affirmed.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

In this juvenile dependency case, the juvenile court declared half sisters, D.J. and D.W., dependents of the court based on both their mother's and D.W.'s father's alleged conduct. Appellant T.W. (mother), challenges the juvenile court's orders declaring D.J. and D.W. dependents of the court as well as the court's order removing the two children from mother's custody and care. D.W.'s father has not appealed.

During the pendency of the proceedings below, and before the children were removed from their parents, mother's youngest child K.S. (who had also been a subject of these proceedings) died unexpectedly at the age of five months. The cause of her death was undetermined. Although the death of K.S. unavoidably hangs over these proceedings, our decision here does not rely on that tragedy. Rather, as discussed below, we conclude wholly apart from K.S.'s death substantial evidence supports both the juvenile court's exercise of jurisdiction based on mother's substance abuse and the court's order removing D.J. and D.W. from mother's custody and care. Accordingly, we affirm.

BACKGROUND

Because the evidence of neglect and risk to the children in this case is overwhelming, we do not recite the factual background in detail. Instead, we summarize the key facts and

events leading to the juvenile court's decision to exercise jurisdiction over the children and remove them from mother.

1. Previous Dependency Proceedings Involving Mother

In May 2014, prior to the instant proceedings, the juvenile court terminated mother's parental rights to her two oldest children, who eventually were adopted. In those earlier dependency proceedings, the juvenile court had exercised jurisdiction over mother's two oldest children in part based on mother's unresolved substance abuse. In that case, the juvenile court had granted mother family reunification services for years, but mother was unable to reunify with her two oldest children.

2. Current Dependency Proceedings

In addition to her two oldest children (to whom her parental rights have been terminated), mother had three younger daughters. Mother's third child, D.J., was born in 2012, when the earlier dependency proceedings were still pending. D.J.'s unofficial birth certificate indicates she has two mothers—mother and L.J., who lives in Texas and is a nonoffending parent in these proceedings. D.J.'s father is unknown.

In February 2016 and after mother's parental rights to her two oldest children had been terminated, mother's fourth child, D.W., was born. Fifteen months later, mother's fifth and youngest daughter, K.S., was born. D.W. and K.S. have the same father (father), who was in and out of prison during these proceedings.

a. *Initial Petition (Children Not Detained)*

In June 2017, soon after K.S. was born, the Los Angeles County Department of Children and Family Services (Department) received a referral stating mother tested positive for amphetamines while at the hospital for the birth of K.S. K.S.

did not test positive for drugs. Mother denied using drugs during her pregnancy and falsely stated she never had a problem with drugs. She told a Department social worker she had painful leg swelling during pregnancy and, a day or two before K.S. was born, mother ingested what she believed was a muscle relaxer, which had been given to her by a friend. Father was incarcerated when K.S. was born.

The Department opened an investigation and in July 2017, when K.S. was approximately one month old, the Department filed a petition under Welfare and Institutions Code section 300¹ on behalf of mother's three youngest children, D.J., D.W., and K.S. (petition). The petition alleged five counts, all of which revolved around either mother's alleged substance abuse or her alleged physical abuse of D.J. Counts a-1, b-2, and j-2 alleged mother had physically abused D.J. by striking her with a belt, leaving marks. Counts b-1 and j-1 alleged mother had a nine-year history of substance abuse, used illicit drugs during her pregnancy with K.S., and lost parental rights to her two oldest children as a result of her drug abuse. At the time of filing the petition, the Department did not seek to detain the children.

At an initial hearing on the petition, the court found a prima facie case had been made to detain the children but released them to mother and ordered the Department to make unannounced home visits. The court also ordered the Department to provide family maintenance services for mother, and to order drug testing only if mother appeared to be under the influence of drugs.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

b. *Investigation*

Over the following year, Department social workers and others met with mother, her children, family members, and others who knew mother. The Department reported on mother's suspected drug use, the family's unsanitary and unsafe living conditions, mother's failure to obtain routine medical care for her children, and potential mental health issues.

i. **Mother's Suspected Drug Use**

Over the course of these proceedings, various Department social workers and family preservation workers observed mother to appear at times "out of it" and at other times slow to respond to questions and slow to answer the door of the family's studio apartment. Often when a social worker arrived at the family's apartment and knocked on the front door, at least 10 minutes passed before mother opened the door. On one occasion it took mother 30 minutes to open the door. Sometimes while waiting for mother to open the door, the social worker could hear a child "crying and crying." When questioned, a paternal aunt did not know if mother used drugs, but she stated, "Something isn't right."

During one home visit, a family preservation worker noted mother spent 20 minutes in the bathroom. The family preservation worker felt "as though mother was hiding/putting drugs away." When mother came out of the bathroom, she and father both appeared out of it. They "were laying back, relaxed as though they were very tired. Their responses were delayed, and their eyes were glassy." The family preservation worker stated " 'their speech was lethargic, and it took forever for them to answer simple questions, as if it was difficult for them to think of the answers.' " Mother told the same family preservation

worker she was “ ‘preparing’ for her drug test” and was going to drink certain liquids to alter the test results.

Following the death of K.S. (discussed below), one of mother’s former neighbors told a Department social worker despite knowing mother for approximately two years, the neighbor had stopped talking to mother because of her lack of care for her children. The neighbor stated mother was not abusive toward the children, “but she neglected them,” she was “known for being extremely negligent,” and she would leave “the kids with anyone.” According to the neighbor, “It was obvious that [mother] was on drugs. I’ve seen paraphernalia in the house. She has all types of pipes. You would see her going to get drugs. I think she uses crystal meth or crack.” The neighbor believed mother “has some depression. She self medicates with the drugs. She didn’t want to have that baby [K.S.] She did a lot of drugs and drinking while she was pregnant.”

Mother had one negative drug test a few days after K.S. was born. However, for the remainder of these proceedings below, mother failed to appear for or comply with any drug test, which numbered more than 20. Mother also denied she ever had a substance abuse problem, despite the fact the juvenile court had terminated her parental rights to her two oldest children in part based on her substance abuse. Mother did not seem to understand her substance abuse was a significant factor leading to the earlier termination of parental rights.

ii. Unsanitary and Unsafe Living Conditions

Throughout these proceedings, Department social workers and others reported the family’s apartment was “extremely cluttered and unsanitary” and “disgusting.” One social worker expressed repeated concerns with the condition of the apartment.

On most visits, the apartment was not only cluttered, but trash and rotting food was strewn about. Sometimes the front door was unable to open fully. For a time, mother had two dogs and three or four puppies living in the apartment. Sometimes there was dog urine and feces on the floor. There were also many items precariously placed, hanging from walls, and presenting obvious safety concerns. At times it was difficult to walk through the apartment. Similarly, at times there were “various cords in a heap” on the floor, exposed wires, and loose screws on the bathroom floor. The bathroom had cleaning supplies and dog food accessible to the children. There were also various items in plain sight that could be used for drug use (such as tubing and lighters), but mother denied she used drugs and noted other uses for the items in question. The day before K.S. was rushed to the hospital (discussed below), a social worker reported the apartment was “boiling hot” “as though you were to open an oven door, hot” and K.S. was crying.

At times and with the Department’s assistance, mother cleaned her apartment and removed some of the safety hazards. Similarly, when father was not incarcerated and was living in the apartment, it appeared cleaner and less cluttered. Although even at times when father was there the apartment was a mess and mother’s efforts to clean and remove hazards was short-lived.

Of particular and repeated concern was the lack of adequate sleeping arrangements for the children. On occasion, a visiting social worker would see a bassinet either full of clothes or folded up, not in use. Other times, there was no bassinet in sight. More than once, the three children were seen sleeping together on a futon. The Department repeatedly explained to mother the dangers of these sleeping arrangements and repeatedly offered to

purchase bunk beds for the home. But mother was unable to follow through with instructions for obtaining the offered bunk beds.

iii. Lack of Medical Care for the Children

The Department detailed its and the children's medical clinic's efforts to have mother bring her three young daughters in for routine medical checkups. The clinic even offered to provide transportation for mother and the children to the clinic. Despite the Department's and the clinic's efforts to assist, mother either failed to appear for appointments and scheduled rides to the clinic or appeared late for appointments and without required paperwork. An employee at the medical clinic told a Department social worker mother was "very non-compliant" and "operates in 'slow motion.'" This pattern went on for months, and by mid-September 2017, K.S. had not been seen by a doctor since leaving the hospital after her birth and it appeared D.W., who was at that time approximately one and a half years old, had also never been seen by a doctor. Mother provided the Department with paperwork indicating D.J. (then four years old) had been seen by a doctor the previous year. The record on appeal includes no routine well-visit medical paperwork for the two younger children.

iv. Mother's Potential Mental Health Issues

The Department reported that as a minor, mother had been sexually abused by an uncle and spent some years in foster care. Also as a minor, mother had been diagnosed with bipolar disorder and manic depression. Mother told a Department social worker she had no current or recent mental health problems, although she did admit to a history of substance abuse.

The Department reported mother did not have a current known mental health diagnosis. However, like mother's former neighbor, the Department believed mother may suffer from depression. The Department noted mother's lack of motivation, inability to maintain a suitable home environment, and the overwhelming challenge of raising three very young children and caring for multiple dogs in a small space.

c. *Death of K.S.*

In the early morning hours of November 15, 2017, K.S. was rushed to the hospital. Upon arrival to the hospital, K.S. was in critical condition, suffering from acute respiratory failure, cardiac arrest, and pulmonary edema (fluids in the lungs). At the hospital, mother explained to a social worker she had put K.S. to bed at 11:00 that night in her bassinet with no blankets or other objects. Between one and three hours later, mother found K.S. unresponsive with vomit and blood around her mouth and nose. Mother administered CPR and called 911. The hospital social worker reported that during his discussion with mother, mother "appeared to be 'nodding off'" and "appeared very lethargic, her voice soft and lacking in clarity, had extremely flat affect, and seemed to be falling asleep." The social worker stated mother was concerned, did not seem tired, but "looked like she may have been under the influence of something." At the close of her interview with the hospital social worker, mother stated she had to leave "to get 'cigarettes and go home.'" Mother was gone for several hours.

Later that day, a Department social worker spoke with a paternal aunt who reported mother had called her when K.S. was brought to the hospital. According to the paternal aunt, mother said that on the night K.S. was rushed to the hospital, mother

had left all three children alone in the apartment after they had fallen asleep. Mother went across the hall to do laundry. Mother told the paternal aunt she came back from the laundry room and found K.S. was not breathing. The paternal aunt believed mother “left out a lot of details and something just did not add up.”

On November 17, 2017, after approximately 48 hours in the hospital, mother’s youngest daughter K.S. died at the age of five months. No autopsy was done, and the attending doctors were unable to identify the exact cause of death. Nonetheless, the police were alerted to the potentially suspicious nature of K.S.’s death. In particular, medical staff reported K.S.’s head CT “showed a lack of oxygen to the brain, which may be the result of suffocation.” The police were also informed lack of oxygen to the brain could have resulted from a variety of things, including “suffocation due to co-sleeping, suffocation due to the child turning over or being on her stomach, SIDS [sudden infant death syndrome], or the result of something unrelated to abuse or neglect.” Mother told a police detective that on the night K.S. was found unresponsive and rushed to the hospital, mother had left the children in the apartment to do laundry down the hall. However, upon realizing she forgot the laundry soap in the apartment, mother returned and noticed K.S. was not breathing. One of mother’s former neighbors told a police detective mother often left her children with neighbors (including her) and sometimes did not return until the next day. The neighbor stated mother and her boyfriend used crystal meth.

After K.S.’s death, mother spoke with a Los Angeles County Coroner investigator. In some respects, what mother told the investigator differed from what mother had told others. For

example, mother told the investigator she did not drink or use narcotics while pregnant with K.S. It does not appear that mother told the investigator she had tested positive for amphetamines while in the hospital after giving birth to K.S. Similarly, although mother had told hospital staff at K.S.'s birth that she did not receive regular prenatal care during her pregnancy, mother told the coroner investigator she had received regular prenatal care when pregnant with K.S. Mother also told the investigator K.S. had her one-month doctor's appointment and had received her required vaccinations. Mother revealed to the investigator that on the night K.S. was rushed to the hospital, K.S. had fallen asleep on a loveseat in between her two sisters. At some point, mother moved K.S. to a bassinet and cleaned the apartment while the children slept. Mother told the investigator that about two hours later, she noticed K.S. was not responsive.

d. *Removal and Amended Petition*

The day before K.S.'s death, and apparently before becoming aware of K.S.'s hospitalization, the Department advised the juvenile court it would be seeking a removal order. The Department cited its increasing concerns with the family, including the very young ages of the children, mother's suspected drug use, odd behaviors, and lack of motivation, as well as the deplorable condition of the home and father's repeated incarceration. On November 21, 2017, after K.S.'s death, the juvenile court ordered D.J. and D.W. removed from the care and custody of mother and father. The children eventually were placed with D.J.'s maternal grandmother pending adjudication.

On November 28, 2017, the Department filed an amended petition. In addition to the original counts based on mother's

alleged substance abuse and alleged physical abuse of D.J., the amended petition included counts based on the unsanitary and detrimental home environment (count b-5), mother's alleged mental and emotional problems (count b-6), and mother's alleged endangerment of K.S. by failing to obtain a crib for K.S. and having K.S. sleep on a bed with her two siblings (counts b-7 and j-3).² The amended petition also included counts based on father's alleged substance abuse (count b-3) and criminal history (count b-4).

e. *Adjudication and Disposition*

The adjudication hearing originally was scheduled for August 22, 2017. However, after multiple continuances, the adjudication hearing finally was held on August 1, 2018, eight months after the amended petition was filed. Despite proper notice, mother arrived late for the hearing.

After hearing argument, the juvenile court sustained as alleged the counts related to mother's substance abuse (counts b-1 and j-1), mental and emotional problems (count b-6), and endangerment of K.S. (counts b-7 and j-3). The court also sustained as alleged the count related to father's substance abuse (count b-3). The court dismissed the remaining counts, including those related to mother's alleged physical abuse of D.J. and the unsanitary and detrimental home environment.

The court declared D.J. and D.W. dependents of the court and removed them from mother's and father's custody. The

² The amended petition also included a subdivision (f) count alleging mother's endangerment of K.S. caused the death of K.S. At the Department's request, however, the juvenile court dismissed that count.

children were placed with D.J.'s mother L.J., under Department supervision.

Mother appealed.

DISCUSSION

On appeal, mother challenges both the court's jurisdictional findings and the order removing the children from her care.

1. Jurisdiction

a. *Standard of Review*

We review the juvenile court's jurisdictional findings for substantial evidence. (*In re Jonathan B.* (2015) 235 Cal.App.4th 115, 119.) We will affirm if there is reasonable, credible evidence of solid value to support the court's findings. (*Ibid.*)

“ ‘In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.’ ” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) Under this standard, our review “ ‘begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.’ ” (*In re David H.* (2008) 165 Cal.App.4th 1626, 1633.) “We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.] The judgment will be upheld if it is supported by substantial evidence, even though

substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

“ ‘However, substantial evidence is not synonymous with *any* evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] Furthermore, “[w]hile substantial evidence may consist of inferences, such inferences must be ‘a product of logic and reason’ and ‘must rest on the evidence’ [citation]; *inferences that are the result of mere speculation or conjecture cannot support a finding* [citations].” [Citation.] “The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.” ’ ” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.) “ ‘[I]f the word “substantial” [is to mean] anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with “any” evidence. It must be reasonable . . . , credible, and of solid value’ ” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633; *In re I.C.* (2018) 4 Cal.5th 869, 892.)

**b. *Substantial Evidence Supports Jurisdiction
Based on Mother’s Substance Abuse (Counts b-1
and j-1).***

As to mother’s alleged substance abuse, the juvenile court exercised its jurisdiction under section 300, subdivisions (b)(1) and (j). Under subdivision (b)(1), a juvenile court may assert dependency jurisdiction and declare a child a dependent of the court when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to

adequately supervise or protect the child . . . or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . substance abuse.” (§ 300, subd. (b)(1).) Under subdivision (j), a juvenile court may assert jurisdiction over a child when “[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.” (§ 300, subd. (j).)

For children of “‘such tender years,’ ” such as D.J. and D.W. here, “‘the absence of adequate supervision and care poses an inherent risk to their physical health and safety.’ ” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 767.) “‘The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’ ” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) “‘The purpose of dependency proceedings is to prevent risk, not ignore it.’ ” (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.) Nonetheless, “[a]lthough evidence of past conduct may be probative of current conditions, the court must determine ‘whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.’ [Citations.] Evidence of past conduct, without more, is insufficient to support a jurisdictional finding under section 300. There must be some reason beyond mere speculation to believe the alleged conduct will recur.” (*In re James R.* (2009) 176 Cal.App.4th 129, 135–136.)

Although mother concedes the evidence “arguably” supports a finding that she is a substance abuser, mother argues the evidence does not support a finding that her substance abuse placed her two young children at substantial risk of harm.

As an initial matter, we agree substantial evidence supports a finding that mother is a substance abuser. Mother correctly notes that evidence includes her history of illicit drug use (which led to the termination of her parental rights to her two oldest children), her positive test for amphetamines when K.S. was born, and her refusal to submit to all but one drug test during the entirety of the proceedings below. In addition, the evidence includes multiple instances of mother appearing under the influence during meetings with social workers, family preservation workers, and hospital staff, as well as her strange behavior during home visits, such as delays in answering the front door, extended time in the bathroom, and admitting she was “prepping” for a drug test and attempting to alter the results. Similarly, mother reportedly acted strangely when at her children’s medical clinic, apparently operating “in ‘slow motion.’ ”

We disagree with mother, however, when she claims there is no nexus between her substance abuse and a substantial risk of harm to her children. At approximately four and two years old, respectively, D.J and D.W. are children of tender years. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219 [children six years old or younger are considered children of “ ‘tender years’ ”].) Mother concedes as much. In cases such as this involving children of tender years, “the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm.” (*In re Drake M., supra*, 211 Cal.App.4th at p. 767.)

Moreover, although mother repeatedly states there was no evidence she used drugs or was intoxicated in the children’s presence, the record reveals otherwise. As noted above, on many occasions it was reported mother appeared under the influence in

her apartment when the children were present. Mother also steadfastly refused to drug test and on one occasion in her apartment admitted she was “prepping” for a drug test so that the results would be negative. Mother’s former neighbor stated it was “obvious” mother was on drugs and she often left the children “with anyone” so she could get high. Finally, mother repeatedly denied any substance abuse issues, which is relevant to the juvenile court’s consideration of risk under section 300. “[D]enial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision.’” (*In re A.F.* (2016) 3 Cal.App.5th 283, 293.) “One cannot correct a problem one fails to acknowledge.” (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197.)

Accordingly, we hold substantial evidence supports the juvenile court’s finding of jurisdiction based on mother’s substance abuse (counts b-1 and j-1).³

c. *Remaining Counts*

Because we conclude dependency jurisdiction was proper under counts b-1 and j-1, we need not and do not reach the remaining counts. A single basis for asserting dependency jurisdiction over the children is sufficient to sustain the juvenile court’s exercise of that jurisdiction. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; *In re Ashley B.* (2011) 202 Cal.App.4th 968, 979 [“As long as there is one unassailable jurisdictional finding, it

³ In her briefing on appeal, mother argues extensively the juvenile court could not properly exercise dependency jurisdiction over D.J. and D.W. based on the tragic death of K.S. Despite the unexpected and unusual circumstances of K.S.’s death during the pendency of the proceedings below, we note our decision is not based on and does not rely upon the fact of K.S.’s death.

is immaterial that another might be inappropriate”].) We decline to exercise our discretion to address the remaining counts.

2. Removal

a. *Applicable Law and Standard of Review*

Section 361, subdivision (c)(1) permits the juvenile court to order a minor removed from his or her parent if the court finds by clear and convincing evidence that the minor is, or would be, at substantial risk of harm if returned home and there are no reasonable means by which the minor can be protected without removal. The court’s “ ‘jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. [Citation.]” [Citation.] “ ‘The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.’ [Citation.] The court may consider a parent’s past conduct as well as present circumstances.” ’ ’ ” (*In re A.F.*, *supra*, 3 Cal.App.5th at p. 292; *In re A.S.* (2011) 202 Cal.App.4th 237, 247.)

As with the juvenile court’s jurisdictional findings, we review the juvenile court’s dispositional removal order under the substantial evidence standard of review. (*In re A.F.*, *supra*, 3 Cal.App.5th at p. 292.)

b. *Substantial Evidence Supports the Juvenile Court’s Removal Order.*

As mother correctly concedes, a jurisdictional finding is prima facie evidence the children cannot safely remain in the home. (*In re A.F.*, *supra*, 3 Cal.App.5th at p. 292.) Thus, for the same reasons jurisdiction was proper, we conclude substantial evidence supports the juvenile court’s removal order. Although mother notes the Department delayed in seeking removal and the

juvenile court did not order removal of the children until after K.S.'s death, we perceive no reason why a perhaps tragically overdue removal of the children bears on the ultimate propriety of their removal.

DISPOSITION

The August 1, 2018 orders are affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.